

CALIFORNIA STATE PERSONNEL BOARD MEETING
Board of Supervisors
Legislative Chamber
City Hall
1 Doctor Carlton B. Goodlett Place
San Francisco, California 94102

Public Session Location - Room 250
Closed Session Location - Room 278

TWO-DAY BOARD MEETING - DECEMBER 7-8, 1999

FULL BOARD MEETING MINUTES

DECEMBER 7, 1999

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

Florence Bos, President
Ron Alvarado, Vice President
Richard Carpenter, Member
Sean Harrigan, Member

2. ELECTION OF BOARD OFFICERS

ACTION: On December 8, 1999, the Board elected Florence Bos as President and Ron Alvarado for Vice President; Sean Harrigan was elected for PERS representative for the year 2000.

VOTE: Bos, Alvarado, Carpenter, Harrigan - Aye.

3. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. The Sacramento Bee printed an editorial critical of the state's efforts to recruit and retain Information Technology employees. Board staff and the Departments of Information Technology and Personnel Administration will send a response to the Bee.
- B. Staff briefed and provided data to the Subcommittee on Employment of the Governor's Task Force on Diversity.
- C. The Statewide Disabled Advisory Committee recognized the Board for its support and assistance in the development and production of a guide to evacuating persons with disabilities.
- D. Staff is pursuing a Deficiency Request for the Kidd and Swiden lawsuit.

4. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on:

- A. Ming Liu v. State Personnel Board (SPB) - On November 24, 1999, the Court of Appeal, Third Appellate District, issued an unpublished decision that reversed the trial court and reinstated the SPB's findings in this case.

In a Precedential Decision, SPB Dec. No. 97-02, the SPB had sustained Ming Liu's dismissal from state service for dishonesty and fraud in securing his position with the Employment Development Department (EDD). EDD charged that Liu dishonestly answered "no" to question 2e on the state application, which question asked, in part, whether Liu had ever been rejected during probation.

On a petition for writ of mandate, the trial court overturned the SPB's finding of dishonesty, finding that the ambiguity in question 2e of the state application and Liu's limited English fluency caused him to misunderstand the question.

The appellate court reversed, finding substantial evidence to support the SPB's credibility determinations and concluding that Liu was in fact dishonest when he answered "no" to question 2e. The court also found that dismissal was an appropriate penalty, given the harm to the public service that arises when the system is manipulated so as to damage the integrity of the hiring process.

- B. Commission on State Mandates - On November 30, 1999, the Commission voted unanimously to adopt the proposed Statement of Decision finding that the Peace Officers Procedural Bill of Rights constitutes a partially reimbursable state mandated program.

5. REPORT ON LEGISLATION - Judy Balmain

- A. Assemblymember Mike Honda has been contacted as a possible author for Board sponsored legislation; Americans with Disabilities Act-conforming language and Attorney's Fees-Assignment.
- B. A meeting with Senator Escutia's staff has been scheduled to discuss the Board sponsored legislation dealing with Bilingual Services.
- C. Walter Vaughn, Laura Aguilera and Judy Balmain will meet with staff from the Joint Legislative Audit Committee to discuss recommendations that were made in the Dymally-Alatorre Bilingual Services Act, audit report.
- D. Meetings are being set to go over the Board's legislative agenda with various Union organizations and their representatives.

6. ORAL ARGUMENT

Oral argument in the matter of CHARLES YOUNGLOVE, CASE NO. 97-3901. Appeal from demotion. Department of Insurance.

Persons Participating:

Sonia Younglove, Esq., representing appellant
Mansour A. Salahu-Din, Senior Staff Counsel, representing
Department

ACTION: Submitted

10. ORAL ARGUMENT

Oral argument in the matter of TERESA DESIDERIO, CASE NO. 99-2020. Appeal from discrimination. Department of Corrections.

Persons Participating:

Bill Macklin, Attorney at Law, representing appellant
Laura Bauman, Staff Counsel, representing Department

ACTION: Submitted

11. ORAL ARGUMENT

Oral argument in the matter of MICHAEL SANCHEZ, CASE NO. 99-1194. Appeal from non-punitive termination. Department of Corrections.

Persons Participating:

Michael Sanchez, Pro Per, Appellant
Department was not present

ACTION: Submitted

12. ORAL ARGUMENT

Oral argument in the matter of JURELENE SCRUGGS, CASE NO 99-0591. Appeal from 30 days suspension. California State University, Fresno.

Persons Participating:

Jurelene Scruggs, Pro Per, Appellant
Janette Redd Williams, University Counsel, CSU, representing
California State University, Fresno

ACTION: Submitted

13. ORAL ARGUMENT

Oral argument in the matter of SAMUEL ROY, CASE NO. 99-1196. Appeal from non-punitive termination. Department of Mental Health.

Persons Participating:

Jay Salter, Consultant, CAPT , representing Appellant
Danny Dunbar, Counsel, representing Department

ACTION: Submitted

A D J O U R N M E N T

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CONCURRENT BOARD MEETING MINUTES

DECEMBER 8, 1999

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

MEMBERS PRESENT:

Florence Bos, President
Ron Alvarado, Vice President
Richard Carpenter, Member
Sean Harrigan, Member

BOARD ACTIONS

2. STATE PERSONNEL BOARD SUMMARY MINUTES OF NOVEMBER 16, 1999

ACTION: Adopted on December 8, 1999.

VOTE: Bos, Alvarado, Carpenter, Harrigan - Aye.

3. ACTION ON SUBMITTED ITEMS

ACTION: (See pages 9)

4. ADMINISTRATIVE LAW JUDGE CASES

On December 8, 1999, Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter, Harrigan - Aye.

REJECTED AND REMANDED DECISION

DIANNA LOUISE KENNEDY, CASE NO. 98-3188

Appeal from demotion

Department of Motor Vehicles

ACTION: Dismissal Sustained

CHIEF COUNSEL RESOLUTIONS

SHELDON FARRELL, NO CASE NO.

Appeal from dismissal

Department of Health Services

ACTION: Pursuant to the authority as set forth in Government Code Section 18681, and pursuant to the Order of the Sacramento County Superior Court in Case No. 98AS00761, the State Personnel Board approves the Settlement Agreement.

ROBERT L. PARIS, CASE NO. 97-3204

Appeal from dismissal

Department of Corrections

ACTION: Appellant's Request for an Order to Show Cause Denied

DONALD STACHNIAK, CASE NO. 99-2280

Appeal from rejection during probationary period

Department of Transportation

ACTION: The State Personnel Board Approved the Stipulated Settlement Agreement

STANLEY TAYLOR, CASE NO. 98-2438

Appeal from dismissal

Department of Water Resources

ACTION: The State Personnel Board Approved the Settlement Agreement

PROPOSED DECISIONS

BRENDAN S. DEEHAN, CASE NO. 99-2024

Appeal from 90-calendar day's suspension

Department of Corrections

ACTION: Suspension Sustained

MARY NOGUCHI, CASE NO. 99-0643

Appeal from demotion
Department of General Services
ACTION: Demotion Revoked.

JOSEPH MOCTEZUMA, CASE NOS. 98-3781 & 98-3782
Appeals from demotion and dismissal
Board of Equalization
ACTION: Demotion and Dismissal Sustained

MURRYA JONES, CASE NO. 99-2699
Appeal from 60-calendar day's suspension
Department of Corrections
ACTION: 60 Calendar Days Modified to 30 Calendar Days
Suspension

ALLEN VIZARD, CASE NO. 99-3708
Appeal from 30-calendar day's suspension
Department of Corrections
ACTION: Administrative Law Judge's proposed decision
rejected by Board. Board to Decide Case Itself

PATRICIA LEPE, CASE NO. 99-1866
Appeal from demotion
Board of Equalization
ACTION: Adopted Findings of Fact, but Modified Demotion to
18 Month Demotion

STEVEN IRVING, CASE NO. 98-2118
Appeal from dismissal
Department of Corrections
ACTION: Dismissal Sustained

CHARLES LOCKE, CASE NO. 99-2590
Appeal from dismissal
Department of General Services
ACTION: Adopted Findings of Fact, but Modified Dismissal to
9 Month Suspension

SANDRA JOHNSON, CASE NO. 99-1256
Appeal from demotion
Department of Corrections
ACTION: Administrative Law Judge's Proposed Decision
Rejected by Board. Board to Decide Case Itself

CESSALY D. HUTCHINSON, CASE NO. 98-3841
Appeal from dismissal
Department of Transportation
ACTION: Dismissal Sustained

DONNA NORRIS, CASE NO. 98-5202

Appeal from dismissal
Department of Transportation
ACTION: Dismissal Sustained

PAULA SAULS, CASE NOS. 97-3408 & 98-3396
Appeals from 2 steps reduction in salary for 1 year and
dismissal
Department of Transportation
ACTION: Reduction in Salary and Dismissal Sustained

M. ALLEN VAN PELT, M.D., CASE NO. 98-2926
Appeal from dismissal
Department of Corrections
ACTION: Dismissal Revoked

MARIA CORRAL, CASE NO. 99-0589
Appeal from medical termination
Department of Social Services
ACTION: Effective Date of Medical Termination Modified and
Partial Back Salary Directed

REYMUNDO DEL RIO, CASE NO. 99-1071
Appeal from 5 working days suspension
Department of Justice
ACTION: Suspension Sustained

PETITIONS FOR REHEARING

JUDY LONGO, CASE NO. 99-1384
Appeal from 60-calendar day's suspension
Department of Corrections
ACTION: Petition for Rehearing Filed by Respondent Denied

5. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1
EXTENSION. (See pages 10-12)
6. MISCELLANEOUS APPEALS DIVISION CASES
(Discrimination Complaints, Withholds, Voided Appointments,
Rule 211 Appeals, Petitions for Rehearing)
On December 8, 1999, Board adopted the following decisions
presented by Linda Brooks, Assistant Executive Officer,
California State Personnel Board.
VOTE: Bos, Alvarado, Carpenter, Harrigan - Aye.

PETITION FOR REHEARING

- A. DONNA HUFF, Case No. 99-3868
Classification: Correctional Officer
ACTION: DENIED

WITHHOLD CASES

- B. RICHARD ASH, Case No. 98-5261
Classification: Psychiatric Technician
ACTION: DENIED
- C. KAREN MAYES, Case No. 98-5128
Classification: Medical Technical Assistant
ACTION: DENIED
- D. JESSICA CARRINGTON, Case No. 99-2474
Classification: Youth Correctional Counselor
ACTION: DENIED
- E. ANTHONY CLINE, Case No. 99-2193
Classification: Cadet, California Highway Patrol
ACTION: DENIED
- F. JOSEPH M. GARZA II, Case No. 99-1775
Classification: Correctional Officer
ACTION: DENIED
- G. ROSALIND M. HAYSE, Case No. 99-1137
Classification: Motor Vehicle Field Representative
ACTION: DENIED
- H. GABINO HERNANDEZ, Case No. 99-2952
Classification: Correctional Officer
ACTION: DENIED
- I. MUSTAPHA IAALI; Case No. 99-1240
Classification: Transportation Engineer (Electrical)
ACTION: DENIED
- J. FABIAN MARES; Case No. 99-1452
Classification: Correctional Officer
ACTION: DENIED
- K. VICTOR P. MENDIOLA, Case No. 99-2835
Classification: Correctional Officer
ACTION: DENIED
- L. ED A. MITCHELL, Case No. 99-3032
Classification: Youth Correctional Officer
ACTION: DENIED

- M. JAMES W. PERRY, II, Case No. 99-2626
Classification: Cadet, California Highway Patrol
ACTION: DENIED
- N. ERNEST M. ROMERO; Case No. 99-2963
Classification: Correctional Officer
ACTION: DENIED
- O. ROBERT SCOTT ROWAN, Case No. 99-2187
Classification: Correctional Officer
ACTION: DENIED
- P. JOHN M. SCHWABAUER, Case No. 99-2770
Classification: Correctional Officer
ACTION: DENIED
- Q. GREGORY EMMET SIMS, II, Case No. 99-2977
Classification: Youth Correctional Counselor
ACTION: DENIED
- R. CONDRAE S. STRAUSS; Case No. 99-0396
Classification: Motor Vehicle Field Representative
ACTION: DENIED

DISMISSALS

- S. BRIAN S. BONTHRON, Case No. 99-1757
Classification: Cadet, California Highway Patrol
ACTION: DISMISSED - Department withdrew action.
- T. JACOB D. GROEN, Case No. 99-2998
Classification: Cadet, California Highway Patrol
ACTION: DISMISSED - Department withdrew action.
- U. JEROME JUNIOR, Case No. 99-3573
Classification: Correctional Officer
ACTION: DISMISSED - No timely response to SPB request for more information.
- V. TIFFANY TOLLETT, Case No. 99-3157
Classification: Correctional Officer
ACTION: DISMISSED - Department withdrew action.
- W. UBALDO C. VEGA, Case No. 99-3543
Classification: Correctional Officer
ACTION: DISMISSED - No timely response to SPB request for more information.

On December 8, 1999, Board adopted the following decisions presented by Linda Brooks, Assistant Executive Officer, California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter, Harrigan - Aye.

- A. CLAUDIA HICKS, Case No. 98-4695
Classification: psychiatric Technician
ACTION: DENIED
- B. PAMELA OSUNA, Case No. 99-0330
Classification: Youth Correctional Officer
ACTION: DENIED
- C. BRENT WHITE, Case No. 99-0534
Classification: Youth Correctional Counselor
ACTION: DENIED

8. EXAMINATION APPEALS

On December 8, 1999, Board adopted the following decisions presented by Linda Brooks, Assistant Executive Officer, California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter, Harrigan - Aye.

- A. MOHAMED ALKADRI Case No. 98-4305
Final Filing Date: NO BULLETIN IN FOLDER
Examination: NO BULLETIN IN FOLDER
Class: Research Manager II
Testing Agency: Department of Transportation
Appeal Received: October 15, 1998
ACTION DENIED
- B. JULIE FITZGERALD Case No. 98-3815
OLIVER WASHINGTON Case No. 98-3709
Final Filing Date: June 11, 1998
Examination: Qualification Appraisal
Class: Lead Structural Steel Painter
Testing Agency: Department of Transportation
Appeal Received: September 8, 1998
ACTION: DENIED
- C. LORI O'TOOLE Case No. 98-1793
Final Filing Date: NO BULLETIN IN FOLDER
Examination: NO BULLETIN IN FOLDER
Class: Correctional Lieutenant
Testing Agency: Department of Corrections
Appeal Received: May 12, 1998
ACTION: GRANTED

- A. SIMON G. ROBINSON, Case No. 99-1165
Classification: Hospital Peace Officer I
ACTION: DISMISSED - Appellant did not confirm
appearance for scheduled hearing.

9. NON-HEARING CALENDAR

On December 8, 1999, the Board adopted items A-B. These items were presented by Laura Aguilera, Chief, Personnel Resources and Innovation Division, California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter, Harrigan - Aye.

- A. The Department of Transportation proposes to revise the series specification for the Fiscal Systems Analyst, Caltrans classification series; and to revise Alternate Range Criteria 354.

- B. TRANSPORTATION SURVEYOR, CALTRANS
The Department of Transportation proposes establishment of a new class series of Transportation Surveyor (Caltrans); establishment of a 12-month probationary period; establishment of Alternate Range Criteria 418 and reallocation of incumbents.

10. WRITTEN STAFF REPORT FOR BOARD INFORMATION

- A. The State Personnel Board report on Review of Vacant CEA Positions Established from June 30, 1995 to January 1, 1999.

ACTION: Report presented

A D J O U R N M E N T

SUBMITTED

1. JOHN W. CONES, CASE NO. 98-3003. Appeal from dismissal. Department of Corrections. (Oral argument held September 8, 1999.)

ACTION: On December 8, 1999, adopted Board decision modifying dismissal to 6 months suspension.

VOTE: Bos, Alvarado, Carpenter, Harrigan - Aye.

2. PAMELA A. KING, CASE NO. 98-1586. Appeal from dismissal. Department of the Youth Authority. (Oral argument held September 8, 1999.)

ACTION: On December 8, 1999, adopted Board decision revoking dismissal.*

VOTE: Bos, Alvarado, Carpenter, Harrigan - Aye.

3. ANDY G. INGERSOLL, CASE NO. 98-3517. Appeal from denial of reasonable accommodation, discrimination based on disability, and constructive medical suspension. Department of Transportation. (Oral argument held November 2, 1999.)

NO ACTION

4. DUANE WILES, CASE NO. 98-4304. Appeal from dismissal. Department of Transportation. (Oral argument held November 2, 1999.)

NO ACTION

*Adopted as Precedential Decision #99-11. [NOTE: Precedential Decisions of the State Personnel Board are published and available by subscription from Continuing Education of the Bar (CEB) in Berkeley. To subscribe, call CEB, toll free, at (800) 924-3924.]

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional forty-five days, the Board hereby publishes its substantial reasons for the need for the forty-five day extension for some of the cases now pending before it for decision.

An additional forty-five days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than 6 months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on December 8, 1999.

WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Bos, Alvarado, Carpenter, Harrigan - Aye.